

MINUTES OF SEPTEMBER 21, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 21, 2015, at 7:00 p.m. in the County Council Chambers, Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman. Mr. Norman Rickard was absent. Also in attendance was James Sharp – Assistant County Attorney, and staff members, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Workman.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Agendas as circulated. Motion carried 4 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 11635 – Lewes Farmers Market, LLC – seeks a variance from the side yard setback requirement (Section 115-74B of the Sussex County Zoning Ordinance). The property is located on the north side of Kings Highway approximately 200 feet south of Clay Road. 911 Address: 16704 Kings Highway, Lewes. Zoning District: B-1. Tax Map No.: 3-34-6.00-54.00.

Ms. Cornwell presented the case and stated the Office of Planning and Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.

Andrew Ratner was sworn in to testify about the Application. William Schab, Esquire, presented the case to the Board on behalf of the Applicants.

Mr. Schab stated that the Applicant is requesting a variance of 0.4 feet from the five (5) feet side yard setback requirement for an existing structure; that the Property has three buildings located thereon; that the Applicant previously received variances for other encroachments on the Property; that a recent survey showed the existing encroachment which stems from an existing stairwell to the rear of the two story building on the northeast side of the Property; that, during the construction of the two (2) story building, an enclosed stairwell was added to the plan; that only a small portion of the stairwell encroaches into the setback area; that only one (1) corner of the building encroaches; that the building was inspected after it was constructed and a Certificate of Compliance was issued for the building; that the Property is odd in shape and the building is angled on the Property; that the structure cannot be moved; that the exceptional practical difficulty was not created by the Applicant; that the Applicant obtained all necessary approvals for the structure when it was constructed; that the building is adjacent to commercially zoned property; that the

neighbor supports the application; that the variance does not alter the character of the neighborhood; that variance requested is the minimum variance to afford relief; that the existing shed has been moved into compliance with the Sussex County Zoning Code; and that only removal of the required stairwell would bring the structure into compliance.

Mr. Ratner confirmed, under oath, the statements made by Mr. Schab. Mr. Ratner testified that the original building plans did not include a second exterior stairwell; that the second stairwell was added as a fire exit; that the stairwell would have to be removed in order to comply with the Code; that the builder constructed the stairwell to the minimum width allowed; that the shed has been moved into compliance with the Code; that the State Fire Marshal required the stairwell; that there are two (2) tenants on the second floor and stairwells were added for both sides give a secondary exit for emergencies; that the stairwell is not a main access to the second floor; and that the building was constructed in 2008.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11635 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape and the State Fire Marshal requirement of the stairwell creates a unique situation;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance does not alter the essential character of the neighborhood and a neighbor supports the application; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11636 – David E. Kunselman & Patricia S. Kunselman – seek a variance from the side yard setback requirement (Section 115-34B of the Sussex County Zoning Ordinance). The property is located on the east side of Shore Drive, 50 feet south of Oak Street. 911 Address: 9279 Shore Drive, Milford. Zoning District: MR. Tax Map No.: 2-30-17.00-54.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Laurie Bronstein, Realtor, was sworn in to testify about the Application. William Schab, Esquire, presented the case to the Board on behalf of the Applicants and submitted a picture for the Board to review.

Mr. Schab stated that the Applicants are requesting a variance of 1 foot from the ten (10) feet side yard setback requirement for existing bump outs on an existing dwelling; that the Applicants purchased the Property in January 2015; that the bump outs are for a bay window and an interior stairway; that a survey completed for settlement showed the encroachments; that the existing dwelling otherwise meets the required setback requirements; that there was a small cottage on the Property in 1999; that the existing dwelling was constructed in 2002; that the bay window on the second floor and the interior stairway encroach one (1) foot into the setback requirement; that a Certificate of Compliance was issued for the dwelling and the violation was not noticed at the time the dwelling was constructed; that the Property cannot otherwise be developed without massive expense and renovation of the existing dwelling; that the exceptional practical difficulty was not created by the Applicants since they did not construct the dwelling; that the Property is located in Prime Hook Beach; that the variance does not alter the essential character of the neighborhood; that the variance requested is the minimum variance to afford relief; and that the variance requested is the least modification of the regulation at issue.

Ms. Bronstein, under oath, affirmed the statements made by Mr. Schab. Ms. Bronstein testified that she is a realtor and is familiar with the area; that she was surprised when she learned of the setback violation; that there would be no access to the second and third floor if the stairwell was removed; and that the encroachment does not adversely affect neighboring properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11636 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The situation is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The use will not be detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11637 – Benjamin M. Oakes & Tammy L. Oakes – seek a variance from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the northwest corner of Mulberry Knoll Road and west of Love Drive. 911 Address: 20690 Mulberry Knoll Road, Lewes. Zoning District: AR-2. Tax Map No.: 3-34-18.00-70.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Benjamin Oakes was sworn in to testify about the Application. William Schab, Esquire, presented the case to the Board on behalf of the Applicants.

Mr. Schab stated that the Applicants are requesting a variance of 0.3 feet from the ten (10) feet side yard setback requirement for an existing dwelling; that the Applicants purchased the Property in 2013; that a survey completed for settlement showed the encroachment; that the previous owners purchased the Property in 1981 and built the existing dwelling; that a portion of the home would have to be removed to comply with the setback requirements; that the dwelling has been in its location for many years without any adverse effect on neighboring properties; that the variance is necessary for the reasonable use of the Property; that the children of the previous owner inherited the Property; that the Applicants proceeded with settlement with an agreement from the seller to pay for the variance request; that the Property cannot otherwise be developed; that the difficulty was not created by the Applicants; that the variance will not alter the character of the neighborhood; that there have been no changes to the Property since the dwelling was first constructed in 1981; and that the variance requested is the minimum variance to afford relief.

Mr. Oakes, under oath, affirmed the statements made by Mr. Schab. Mr. Oakes testified that the entire house would have to be moved to comply with the Code; and that the location of the dwelling does not adversely affect the neighboring properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11637 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The situation is unique since the Property was an estate sale;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Mills – yea – and Mr. Callaway – yea.

Case No. 11638 – Warrior Beach, LLC c/o Bruce Mears – seeks variances from the side yard and rear yard setback requirements (Section 115-34B of the Sussex County Zoning Ordinance). The property is located on the south end of Heather Lane, 75 feet north of Windswept Way. 911 Address: 30980 Heather Lane, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-9.00-422.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Bruce Mears was sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicant is requesting a variance of 0.3 feet from the ten (10) feet side yard setback requirement for a deck, a variance of 0.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling and proposed addition, a variance of 3.4 feet from the ten (10) feet side yard setback requirement for a deck and set of steps, and a variance of 1.1 feet from the ten (10) feet rear yard setback requirement for a deck; that the existing dwelling was approved for variances in December 2014; that the Applicant later purchased the Property and planned to make some extensive repairs and renovations to the existing dwelling; that the proposed changes will require the same variances as granted in 2014; that the Applicant plans to replace the wood on the existing stairs and the existing deck; that the existing first floor of the dwelling will remain the same; that the second and third floors of the existing dwelling will be removed and rebuilt; that the first floor must remain to maintain compliance with the Delaware Department of Natural Resources and Environmental Control (“DNREC”) setback requirement; that the proposed addition will have a lower roof line than the existing dwelling; that the Applicant is requesting the variances in order to assure all the changes to the existing structure are included; that the situation is unique; that the original dwelling was built in 1983 and complied with the setback requirements, making this property unique; that the variances are necessary to enable reasonable use of the Property; that the variances will not alter the essential character of the neighborhood; and that the variances are the minimum to afford relief.

Mr. Mears, under oath, affirmed the statements made by Mr. Fuqua.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11638 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The existing dwelling and previous approved variances create a unique situation;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11639 – Scott C. Shipman and Spencer C. Shipman – seek a variance from the front yard setback requirement (Section 115-34B of the Sussex County Zoning Ordinance). The property is located on the north side of South Carolina Avenue approximately 142 feet west of North Bayshore Drive. 911 Address: 108 South Carolina Avenue, Milton. Zoning District: MR. Tax Map No.: 2-35-3.16-85.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Scott Shipman was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Meredith stated that the Applicants are requesting a variance of ten (10) feet from the thirty (30) feet front yard setback requirement for a dwelling and an enclosed porch; that the Property is located in Broadkill Beach; that a survey completed in June 2015 showed the encroachment; that the Applicants recently purchased the Property; that an enclosed porch is located in the front yard setback area; that the existing dwelling was built in the 1950s; that a building permit was issued in 2004 to enclose the existing porch; that aerial photos show that numerous lots are developed with similarly situated structures; that the Property is located in a flood zone with a flood elevation of nine (9) feet and the Applicants would like to raise the existing structure above the base flood elevation; that the footprint of the dwelling will remain the same when raised; that the enclosed porch will be the full width of the dwelling when completed; that the Property is unique since it is located in a flood plain requiring that the dwelling be raised; that the uniqueness of the Property has created an exceptional practical difficulty for the Applicants; that the existing encroachment has gone undetected since 2004; that the variance is necessary to enable reasonable use of the Property; that the neighboring properties have been developed and, thus, the use does not impair the uses of the neighboring or adjacent properties; that the exceptional practical difficulty was not created by the Applicants; that the dwelling and porch were constructed by a prior owner; that the variance will not alter the essential character of the neighborhood; that

the use is not detrimental to the public welfare; and that the variance requested is the minimum variance necessary to afford relief.

Mr. Shipman, under oath, affirmed the statements made by Mr. Meredith. Mr. Shipman testified that the proposed stairs will comply with the required setbacks; that the proposed septic system will be in the rear yard of the Property; and that the location of the septic system prevents moving the existing structure into compliance.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11639 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The flood zone requirement creates a unique situation;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variances to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway.

Case No. 11640 – Ann R. Dommes, Trustee of the Ann R. Dommes Revocable Trust – seeks a variance from the front yard setback requirement (Section 115-42B of the Sussex County Zoning Ordinance). The property is located on the north side of Beacon Drive in the cul-de-sac at the end of Lighthouse Drive. 911 Address: 21 Beacon Drive, Rehoboth Beach. Zoning District: GR. Tax Map No.: 3-34-7.00-79.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Ann Dommes was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case to the Board on behalf of the Applicant.

Mr. Meredith stated that the Applicant is requesting a variance of 6.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Applicant purchased the Property in July 2015; that a survey completed for settlement showed the encroachment; that the existing manufactured home was placed in 1996 and is located on a foundation; that the unit is

classified as a “C” Grade dwelling by the Assessment Division and has been classified as such since 1996; that a permit was issued for the front porch in 1987; that the porch is enclosed; that the Property is unique as it is pie shaped and is located at the end of a cul-de-sac; that there is an existing twenty (20) foot wide drainage easement in the rear of the Property; that there is a county road located near the rear of the Property; that the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code; that there are other homes in the area similarly situated in the development; that the development is well-developed; that the Applicant seeks the variance to allow the home to remain in its current location; that the variance will not alter the character of the neighborhood; that the variance requested is the minimum variance to afford relief; that the use is not detrimental to the public welfare; that the exceptional practical difficulty was not created by the Applicant; and that there have been no complaints from the neighbors.

Ms. Dommies, under oath, affirmed the statements made by Mr. Meredith.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11640 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The shape of the Property makes this Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11641 – Darrell Lewis & Beth Ann Lewis – seek a variance from the separation requirement between a residence and a poultry house (Section 115-20B(1)(c) of the Sussex County Zoning Ordinance). The property is located on the west side of the Christ Church Road approximately 285 feet south of Chipmans Pond Road. 911 Address: 31236 Christ Church Road, Laurel. Zoning District: AR-1. Tax Map No.: 2-32-18.00-1.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Mr. Hudson recused himself from participating and left the Chambers during the public hearing.

Beth Ann Lewis was sworn in and testified requesting a variance of 81.5 feet from the two-hundred (200) feet separation requirement between a residence and a poultry house; that the existing Property must be subdivided into three parcels; that her son is taking over the existing poultry farm; that the existing dwelling will be separated from the existing poultry farm for her ex-husband; that the dwelling was built in 2002 and is only 118 feet from the nearest poultry house; that the location of the dwelling at that time was to keep the dwelling further away from the road; that there was no plan to divide the Property when the dwelling was built; that an exceptional practical difficulty exists because both structures are already in place and cannot be easily moved; that the current situation makes this Property unique; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that there are other poultry farms in the area; that the poultry houses have been on the Property for many years; that the variance will not alter the essential character of the neighborhood; that the use is not detrimental to the public welfare; that the variance is necessary to enable reasonable use of the Property; and that the variance is the least modification of the regulation at issue.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11641 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The change of ownership creates a unique circumstance to the Property;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Mr. Hudson returned.

Case No. 11642 – Mark Yoder & Polly Yoder – seek a special use exception to place a multi-sectional manufactured home that is more than five (5) years old (Section 115-20A(1)(h) of the Sussex County Zoning Ordinance). The property is located on the north side of Hickman Road approximately 326 feet east of Farm Lane. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 5-30-3.00-2.08.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Kevin Schroeder and Mark Yoder were sworn in and testified requesting a special use exception to place a multi-sectional manufactured home that is more than five (5) years old. Mr. Schroeder testified that the proposed manufactured home is a 2006 model; that it measures 2,100 square feet in size; that it is only four (4) years older than what is permitted by the Zoning Ordinance; that a new model would cost over \$100,000.00; that the Applicants purchased the repossessed home for slightly more than \$40,000.00; that a newer home would look nearly identical to this unit; that the adjacent property belongs to the family and is farmed; that there are numerous manufactured homes in the surrounding area; that the unit will be placed in the rear of this deep lot; that the lot is wooded; that some homes in the area are older than the proposed unit; that the unit will not be seen from the road; that the Applicants plan to install a block foundation in the spring; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties. Mr. Schroeder submitted pictures for the Board to review.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11642 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11643 – Lois Berl – seek a special use exception for a garage / studio apartment (Section 115-23C(6) of the Sussex County Zoning Ordinance). The property is located on the southwest side of That Way off of County Seat Highway (Route 9). 911 Address: 23988 That Way, Georgetown. Zoning District: AR-1. Tax Map No.: 1-35-22.00-10.03.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of the Application and had not received any correspondence in opposition to the Application.

George Donald was sworn in and testified requesting a special use exception for a garage / studio apartment; that he is the neighbor and brother-in-law of the Applicant; that the structure

was initially built as a shed to be used for the Applicant's art studio; that she has added electric, a sink and a kiln to the structure; that the existing septic and well for the existing dwelling have been approved to hook up the studio apartment; that the space is not used for living quarters; that she uses a standard oven for baking clay for the jewelry she makes; that the use does not substantially adversely affect the surrounding uses of the neighboring and adjacent properties; that the structure is in the middle of ten (10) acres and cannot be seen easily; that he does not oppose the request; and that a parking space is available for the apartment.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11643 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be granted for the reasons stated. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

OTHER BUSINESS

Case No. 11273 – Zerby, LLC – seek a variance from the front yard setback requirement for a through lot (Section 115-82B and 115-194.1E(3) of the Sussex County Zoning Ordinance). The property is located southeast corner of the intersection of Rehoboth Avenue Extended and Route One. 911 Address: None Available. Zoning District: C-1. Tax Map Nos.: 3-34-13.19-84.00, 85.00, & 86.00.

Request for a time extension.

Ms. Cornwell read a letter from the Applicant requesting a time extension for variance that expires November 5, 2015. The Applicant would like to extend that approval to November 5, 2016.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request for a time extension be granted until November 5, 2016. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting Adjourned 8:35 p.m.